

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

STEVE RUSSELL, et al.,)	
)	
Plaintiffs,)	
v.)	No. 02-2598-KHV
)	
SPRINT CORP., et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

Defendant Sprint Spectrum LP (“Sprint”) removed this case to federal court, asserting Section 332 of the Federal Communications Act of 1934, 47 U.S.C. § 332, as the basis for federal jurisdiction. On May 22, 2003, the Court found that Sprint’s removal was improper and remanded the case to the District Court of Wyandotte County, Kansas. The Court further found that plaintiffs are entitled to an award of just costs and actual expenses under 28 U.S.C. § 1447(c). This matter comes before the Court on Plaintiffs’ Motion For Attorney’s Fees (Doc. #30) filed July 2, 2003, in which plaintiffs request attorney’s fees of \$32,644.00. For reasons set forth below, the Court sustains plaintiffs’ motion in part and awards expenses of \$449.96 and attorney’s fees of \$10,002.00 for a total of \$10,451.96.

Plaintiffs seek reimbursement for 42.50 hours expended by attorney Charles Speer, at the hourly rate of \$350.00, and 9.4 hours by Speer’s paralegal, Arthur Jackson, at the hourly rate of \$110.00. Plaintiffs also seek 52.40 hours for work by partners at the firm of Whatley Drake, L.L.C., including Peter Burke (48.3 hours at a rate of \$300.00 to \$325.00); Andrew Allen (1.6 hours at a rate of \$325.00 to \$350.00); and Joe R. Whatley (2.4 hours at a rate of \$450.00 to \$475.00).

Sprint argues that plaintiffs have not presented evidence that the hourly rates are reasonable or that

the rates are justified by the attorneys' education, background and experience. Sprint further argues that the amount of time is excessive considering the narrow issues presented by the removal, the skill required to perform the work and fee awards in similar cases.

The Court agrees that both the hourly rates and the hours expended are excessive. A reasonable hourly rate comports with rates prevailing in the community for similar services for lawyers of reasonably competent skill, experience, and reputation. Metz v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 39 F.3d 1482, 1493 (10th Cir. 1994). "A district judge may turn to her own knowledge of prevailing market rates as well as other indicia of a reasonable market rate." Id. (citation omitted). In this case, plaintiffs' counsel provide no evidence of market rates in the Kansas City area, other than Mr. Speer's affidavit that his rates and those of the Whatley Drake attorneys are fair and reasonable and are within the range of rates typically charged by attorneys with similar education and experience for similar work. Plaintiffs provide no evidence of the experience and education of any attorneys. Further, the Court has found no fee awards in this district which approach the requested hourly rates. See, e.g., Sheldon v. Vermonty, 237 F. Supp.2d 1270 (D. Kan. 2002) (\$155.00 per hour is market rate in Kansas City for lead counsel); Robbins v. Chronister, No. 97-3489-DJW, 2002 WL 356331 at *13 (D. Kan. Mar. 1, 2002) (\$175.00 per hour for counsel); Lintz v. Am. Gen. Fin., Inc., 87 F. Supp.2d 1161, 1171 (D. Kan. 2000) (\$155.00 per hour for counsel) (citing Baty v. Willamette Indus., Inc., No. 96-2181-GTV, 1999 WL 713959 at *2 (D. Kan. Aug. 16, 1999)); Wilder-Davis v. Board of Comm'rs of Johnson County, Kan., No. 98-2363-GTV, 2000 WL 1466691 at *5 (D. Kan. Aug 8, 2000) (\$165.00 for lead counsel, \$110.00 for other attorneys); Cadena v. Pacesetter Corp., No. 97-2659-KHV, 1999 WL 450891 at *5-6 (D. Kan. Apr. 27, 1999) (\$155.00 per hour for counsel with eight years experience; \$58.00 per hour for paralegal); Hampton v. Dillard Dep't

Stores, Inc., No. 97-2182- KHV, 1998 WL 724045 at *2 (D. Kan. Sept. 24, 1998) (\$190.00 per hour for counsel with 28 years experience in “cutting edge civil rights litigation;” \$65.00 per hour for paralegal); Outdoor Sys., Inc. v. City of Merriam, Kan., 2000 WL 575023 at *4-5 (D. Kan. Feb. 25, 2000) (\$165.00 and \$155.00 per hour for lead counsel, \$70.00 per hour for paralegal).

Turning to the time expended, plaintiffs point out that the briefs in support of their motion to remand required analysis of case law addressing whether Section 332 of the Federal Communications Act of 1934, 47 U.S.C. § 332, creates complete “removal preemption.” Based on a review of plaintiffs’ briefs – as well as the Court’s own experience in researching and drafting the memorandum and order of remand – the Court concludes the work involved did not reasonably require nearly 100 (94.9) hours of attorney time – particularly *partner* time.¹ The Court finds that plaintiffs should be compensated for a total of 60 hours, with ten of those hours at the partner rate. Based on the Court’s knowledge of the prevailing market rates, the Court further finds that a reasonable rate for a partner working on this case is \$175.00 per hour, and the reasonable associate rate is \$150.00. The Court finds that the paralegal reasonably expended 9.4 hours and that plaintiffs should be compensated for these hours at a rate of \$80.00 per hour.

In conclusion, the Court finds that plaintiffs are entitled to an award of \$9,250.00 for attorney time (\$175.00 x 10 hours plus \$150.00 x 50 hours = \$9,250.00) and \$752.00 for paralegal time (\$80.00 x 9.4 hours = \$752.00). The Court therefore awards plaintiffs reasonable attorney’s fees in the amount of \$10,002.00.

¹ Plaintiffs’ counsel filed a one-paragraph motion to remand, a twelve-page memorandum in support, an eight-page reply memorandum, and a three-page opposition to Sprint’s motion to file a second supplemental memorandum.

Plaintiffs also provide an itemized statement of expenses associated with obtaining the remand order, including \$12.91 for UPS delivery, \$19.00 for copies, \$16.25 for faxes and \$401.80 for electronic research. The Court finds that these expenses are reasonable and that plaintiffs are entitled to \$449.96 in expenses.

IT IS THEREFORE ORDERED that Plaintiffs' Motion For Attorney's Fees (Doc. #30) filed July 2, 2003 be and hereby is **SUSTAINED IN PART**. The Court finds that plaintiffs are entitled to attorney's fees of \$10,002.00 and expenses of \$449.96, for a total of \$10,451.96.

Dated this 20th day of August, 2003, at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge